Dying without a will

– Who gets what and fixing injustice?

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Where there's a will there's a way.

When someone dies ‘intestate’, it means that they died without leaving a valid will. It might be that they never made a will, or that the one they did make wasn’t properly written.

When someone dies without a will, what happens to their estate will depend on the intestacy rules for the country they lived in. Usually, it will go to their spouse or another close family member – but there are key differences depending on where you live, even across the UK.

STOP – Are you sure there is no will in existence?

It is important to establish if a Will exists prior to distributing an estate under the rules of intestacy or before making a claim to an estate. If a Will does exist, it will name the Executors and Beneficiaries that the deceased had wished to leave their estate to. It is not uncommon for the Testator (the person who wrote the Will) to not share that a Will exists or where it is located, which can lead to complications when they pass away. It is not unusual for the existence of a Will or its whereabouts to be unknown, resulting in the estate being treated incorrectly as intestate.

If you are distributing an estate for a loved one you are financially liable for any errors made during distribution. You therefore should take steps to understand whether or not a Will existed prior to applying for Letters of Administration to protect yourself.

To do this you can use Certainty the National Will Register tocheck to see if a Will exists. Certainty the National Will Register is The Law Society’s provider of a National Will Register for England and Wales. A Certainty Will Search checks to see if a Will was registered at the National Will Register and also searches nationally for Wills held by solicitors and Will writers that have not been registered. There is a small charge for a Will search which can be claimed back from the estate as it is a legal disbursement and you receive a Certainty Will Search report. Retain this report as it provides evidence that you took the necessary steps to understand if a Will existed and therefore protects you.

www.nationalwillregister.co.uk

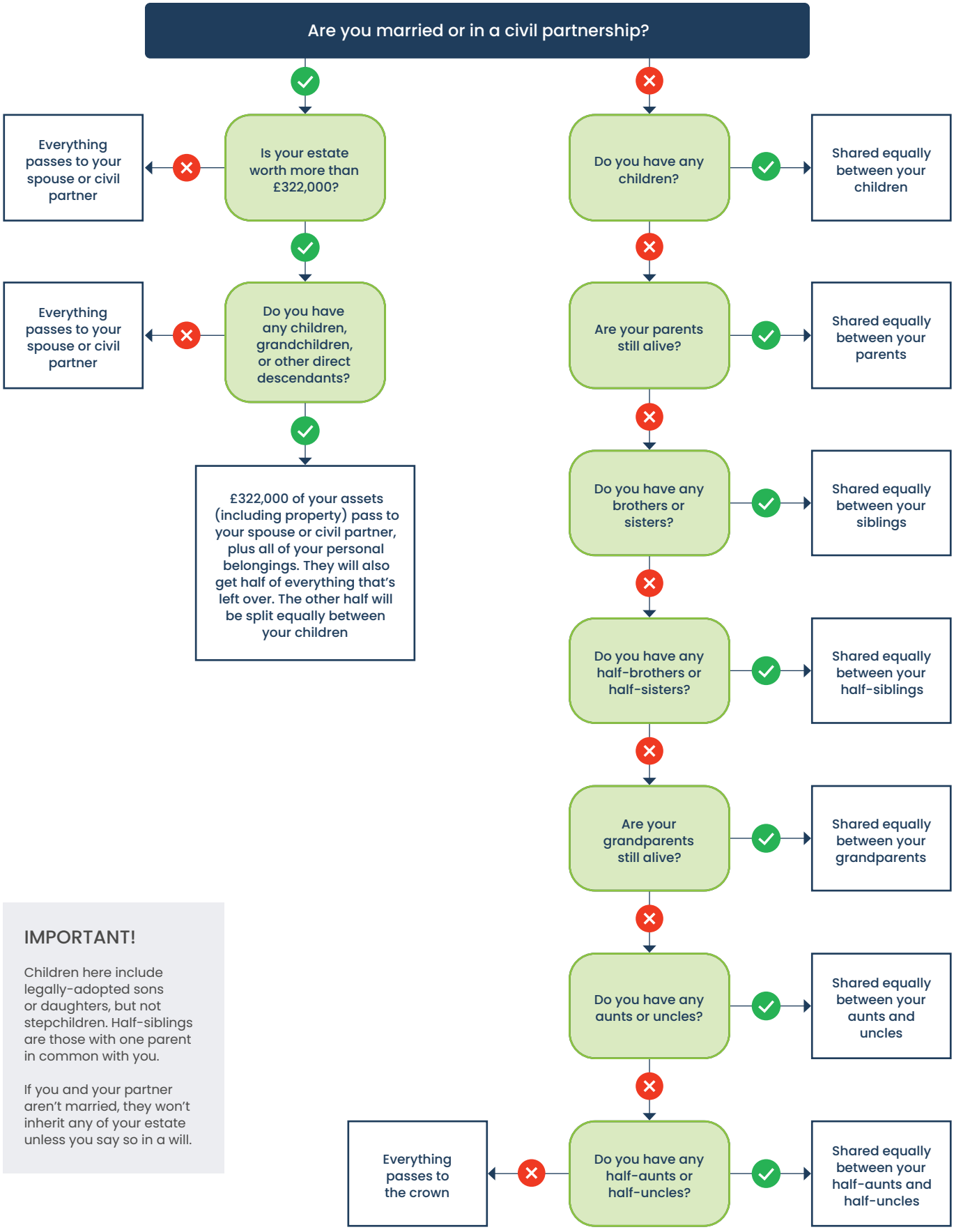
certainty.co.uk
the National Will Register

The rules of intestacy in England & Wales

The rules on what happens if you die intestate in England and Wales are pretty simple. You can use our intestacy rules flowchart here for quick reference, or click here to skip ahead to a full explanation.

Intestacy Flowchart

- England & Wales



IMPORTANT!

Children here include legally-adopted sons or daughters, but not stepchildren. Half-siblings are those with one parent in common with you.

If you and your partner aren't married, they won't inherit any of your estate unless you say so in a will.

Who inherits when someone dies without a will – the details

The flowchart on the previous page will hopefully have given you a guide to who gets what when. A more detailed description is set out below in the order of succession under the Intestacy Rules:

1. Surviving Spouse or Civil Partner

Surviving spouses and civil partners have priority in most countries' intestacy rules. England and Wales are no different, but the amount a surviving spouse or civil partner will inherit depends on the size of the estate and whether you there are also children.

If an individual is married or in a civil partnership when they die, and the estate is worth less than £322,000, the surviving spouse or civil partner will inherit everything.

If the estate is worth more than £322,000, and you don't have children, your spouse or civil partner will again inherit everything.

Be aware – This only includes assets in the deceased's estate. Sometimes property (through survivorship), life policy proceeds and pension benefits pass OUTSIDE of the estate and could go elsewhere.

But if the estate is worth more than £322,000, and the deceased DID have children, then the surviving spouse or civil partner will inherit:

- All the deceased's personal belongings (including pets, cars, jewellery, photos, clothing etc).
- The first £270,000 of the estate.
- Half of what is left over.

The other half of what is left over will be split equally between the deceased's children. And if one of their children died before them, their share of the estate can pass to their children (the deceased's grandchildren) instead.

Be aware –
- **Surviving partners who were not married or in a civil partnership RECEIVE NOTHING.**
- **If the deceased was separated/going through uncompleted divorce proceedings, the deceased's surviving spouse or civil partner can still inherit.**
- **If the deceased completed a divorce (with a Decree Absolute pronounced) then the former spouse/civil partner is ignored by the Intestacy Rules.**

2. Children, or other direct descendants

If there is no surviving spouse or civil partner (so single, divorced, widowed, or cohabitee), then the deceased's children will inherit. The estate will be split equally between them.

As above, if one the deceased's children has died before the deceased, but they have children or grandchildren of their own, these direct descendants will inherit their parent's share.

Be aware -
- **Adopted children have the same rights as biological children.**
- **Children from a previous marriage have the same rights as those from the deceased's later marriages.**
- **Step-children inherit NOTHING unless they've been adopted.**

3. Parents

If the deceased was not married or in a civil partnership and also has no children, then any surviving parents will inherit the estate (equally if both still alive).

4. Your brothers and sisters

If the deceased was not married or in a civil partnership and also has no children, then any surviving parents will inherit the estate (equally if both still alive).

Be aware –
- **If one of the deceased's brothers or sisters has passed away before the deceased, their children (your nieces or nephews) inherit their share instead.**
- **A half-brother or half-sister is someone who shares one biological parent with the deceased. Half-siblings only receive AFTER the claims of siblings who share both parents. As before, if one of those half-siblings predeceases then their children will receive their parent's share equally.**

5. Remoter family members

(in the order they receive)

This is where it gets more complicated:
- Grandparents of the Deceased (equal claims from both sides of the deceased's parents' families).
- Aunts and Uncles of the Deceased (again their children take their share if they died before the deceased).
- Half-aunts and half- uncles (someone who shares one biological parent with one of the deceased's parents (again their children take their share if they died before the deceased).

Be aware – If none of the above can be found, the deceased's estate will be declared "Bona Vacantia" and will pass to the Crown!

What to do if intestacy doesn't work for the family?

Intestacy don't often work for the families left behind. That might be because there are cohabitees or step children who are ignored or perhaps there are children under 18 who have inherited parts of the estate that the surviving spouse needs (particularly with shares in a house). So what to do?

First things First – Make sure the application of the Intestacy Rules are clearly understood and everyone knows who gets what.

- Use our flowchart on the previous page to work this out.
- If you have incomplete family trees or need to trace family members we would suggest using professionals to do this – Title Research (www.titleresearch.com are excellent and only charge for what they do, not a contingency fee).
- If the distribution under the Intestacy Rules doesn't work for your family, you have 2 options. In order of preference:

Option 1
Vary the terms of Intestacy?

- Whilst Intestacy Rules are strict, it is possible to change the effect of them if **ALL** the beneficiaries who are entitled (see Step 1 above)**AGREE AND CONSENT** to change how the estate is divided to a different arrangement.
- This agreement to vary needs to be dealt with by a legal document known as a **Deed of Variation** which your legal advisors can help you with. Some important things to note:
  - It is only possible for a Deed of Variation to be executed **within 2 years of the date of death of the Deceased.**
  - It only works if ALL the beneficiaries entitled under intestacy agree and sign the Deed.
  - If some of the beneficiaries entitled under the Rules of Intestacy are under the age of 18 years, they cannot obviously sign the Deed as they are children – to get to the same position you will need help in making an application to court for the new settlement to be approved – it is more expensive but certainly possible.

Option 2
Application under the Inheritance (Provision for Family and Dependents) Act 1975 ("1975 Act")

- If a variation has not been possible as the party in need of greater provision faces opposition, then they may have the right to bring a claim under the 1975 Act.
- The 1975 Act gives the court power to vary the terms of intestacy to provide reasonable financial provision to a qualifying person. Things to note about 1975 Act claims:
  - A qualifying person includes surviving spouses/civil partners, former spouses, cohabitees, children and financial dependents.
  - The deceased must have died whilst domiciled in England or Wales.
  - The claim must be brought **within 6 months of the date of the Grant of Letters of Administration** – outside that time limit you will need court permission to issue!
  - Reasonable financial provision means different things for different classes of applicant.
  - Expert legal assistance recommended – we can help.

Thy Will be done

E enquiries@thywill.co.uk
T 0800 668 11 64
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THE BRITISH WILLS AND PROBATE AWARDS 2019 FINALISTS

THE BRITISH WILLS AND PROBATE AWARDS 2020 WILL WRITING FIRM OF THE YEAR HIGHLY COMMENDED

THE BRITISH WILLS AND PROBATE AWARDS 2021/22 WILL WRITING FIRM OF THE YEAR HIGHLY COMMENDED